

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

PATRICIA L. CLEEK,)	
)	
Plaintiff)	
v.)	Case No. CIV-07-78-C
)	
THE STATE OF OKLAHOMA, ex rel.,)	
BOARD OF REGENTS FOR THE)	
OKLAHOMA AGRICULTURAL AND)	
MECHANICAL COLLEGES, a state)	
agency,)	
)	
Defendant)	

MEMORANDUM OPINION AND ORDER

Following the Court's determination that Defendant was entitled to Summary Judgment, Defendant filed a timely motion for attorneys' fees. In support of its motion, Defendant argues that Plaintiff's case was unreasonable and without foundation and that therefore it is entitled to recover the attorneys' fees expended in the matter. However, Defendant offers no factual basis for its request. Rather, Defendant merely makes the conclusory assertion that Plaintiff's case was an unreasonable and baseless action. In response, Plaintiff argues that her claim had a reasoned basis and the fact that the Court ultimately ruled against her does not change that fact.

The Supreme Court has established the standard for evaluating this issue: "a district court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." Christiansburg Garment Co. v. Equal

Employment Opportunity Comm'n, 434 U.S. 412, 421 (1978). Relying on this standard, the Tenth Circuit has determined a fee award was improper where a plaintiff's case was dismissed pursuant to Fed. R. Civ. P. 12(b)(6). See Ferroni v. Teamsters, Chauffeurs & Warehousemen Local No. 222, 297 F.3d 1146, 1153 (10th Cir. 2002) ("Claims that are dismissed for failure to state a claim are not automatically frivolous."). Here, in the absence of any facts from Defendant demonstrating that Plaintiff's case was frivolous, unreasonable, or without foundation, the Court finds an award of attorneys' fees would be improper.

Accordingly, Defendant's Motion for Attorneys' Fees Against Plaintiff Patricia L. Cleek (Dkt. No. 40) is DENIED.

IT IS SO ORDERED this 4th day of December, 2007.



ROBIN J. CAUTHRON
United States District Judge